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# For Congress, a Stronger Intelligence Role

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In 1975 allegations of illegal, improper and unethical activities on an enormous scale by the intelligence agencies of the United States began to surface in the nation's press.

Those reports, following in the wake of the Watergate scandal, generated a popular outrage that led the White House and Congress to seek ways to bring secret intelligence activities under constitutional control.

Fifteen months later the Senate Select Committee on Intelligence Activities, headed by Frank Church (D-Ida.) and John Tower (R-Tex.), concluded:

"Today there is an awareness on the part of many citizens that a national intelligence system is a permanent and necessary component of our government. The system's value to the country has been proven, and it will be needed for the foreseeable future. But a major conclusion of this inquiry is that congressional oversight is necessary to assure that in the future our intelligence community functions effectively, within the framework of the Constitution."

It was Cyrus R. Vance, at the time out of government but with a broad range of experience behind him, who laid out for the committee guidelines for high-risk secret activities. After a decade, these guidelines still seem wise and sensible.

Vance, who was to become the secretary of state under President Jimmy Carter, argued that such activities should be undertaken only when the vital interests of the United States were at stake; when no other means were available; after all risks, advantages and disadvantages were examined, and only if such actions were in accord with our declared policies, laws and prophecies.

Had the Vance standard been followed during the consideration of the Iran-*contra* operation, the disastrous consequences might have been avoided. As the congressional committees continue their investigations into this scandal, they should use the Vance standard as a focus of judgment.

Why weren't the committees informed? When the House and the Senate created permanent oversight committees for intelligence activities, there was an implicit understanding that the constitutional trade-off for authorizing secret activities was a requirement that Congress be fully informed of all aspects of intelligence activities. It was understood from the outset that the oversight committees would be informed of any covert actions that might affect the security or reputation or alter ongoing policy or require the use

of money or the dispatch of men or troops before the actions were taken.

The idea of informing Congress in a timely fashion was not intended to mean after the fact. It was then the view, as it is now, that the security policy of the United States should be a joint responsibility of Congress and the executive branch. Congress, obviously, cannot exercise its responsibility to give advice or to oversee the performance of the intelligence agencies unless it is informed in time to act meaningfully.

The Intelligence Oversight Act of 1980 was the result of five years of negotiations between Congress and administrations from

both parties. Drafted jointly by the White House, the intelligence agencies and the oversight committees, the act repealed the Hughes-Ryan amendment, which had required the intelligence agencies to report all covert actions to eight committees, and reduced the reporting requirement to the two intelligence-oversight committees.

Yet, as the intricacies of the Iran-*contra* affair unfold, it is clear that effective congressional oversight has failed. Despite the language of the oversight statute, and its clear intent, lawyers and officials from both the Carter and Reagan administrations have sought to find ways to avoid real consultation and prior notification to Congress, as required by law.

It is ironic that both administrations attempted rescue operations directed from the White House, with disastrous results that have seriously damaged a President's ability to govern. (Vance, one must remember, resigned his Cabinet post in the wake of the aborted attempt to rescue American hostages in Iran.)

In both cases serious consultation with seasoned leaders of Congress might have brought out evidence of flaws in planning and raised questions about the efficacy of the means chosen to carry out policies that were otherwise sensible and in the national interest.

Why has there been a tendency in the White House to avoid informing Congress? The argument that Congress can't keep a secret is a valid concern, but not an excuse. The leaders of Congress and the key committees are experienced in national-security matters, know how to keep valid secrets confidential and are just as patriotic and dedicated as is any White House official. It is apparent that information about secret activities like the Iran-*contra* operations was withheld from Congress because these policies would certainly have been challenged, and the planned operations might have been modified or aborted altogether.

Why was there a resort to an outside operation run out of the National Security Council? The history of past secret operations, such as the various Cuban operations of the 1960s, reveals a desire to use a secret "can do" action arm to deal with situations that regular agencies of government are prevented from doing or are unable to address effectively. All too often, when it has been asserted that the President has a constitutional right to pursue such operations without reference to Congress, there is an effort to avoid established constitutional processes that challenge assumptions and that require debate and proof that such actions are in the national interest.

Once again committees have been formed to investigate why these processes went wrong and to prescribe remedies. Clearly the two congressional select committees need to find solutions to the problem of making effective consultations

between the two branches a working reality. Certainly there is a need to make it possible for the leaders of Congress and the President and his men to confer, discuss and listen to each other so that our national policies will have broad political support.

The Constitution created a government of divided power and joint responsibility. But clearly Congress and the White House have not shared that power and responsibility in the crucial area of national security. The leaders of Congress and the armed services, foreign relations and intel-

ligence committees are the natural counterpart to the President and the National Security Council. The Iran-*contra* disaster and other episodes are sufficient evidence to suggest that the outcome of these inquiries should be a stronger, more effective means of oversight and consultation.

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